In the High Court of Judicature at Madras

Dated:20.04.2005

Coram:

The Hon'ble Mr. Justice P. SATHASIVAM

and

The Hon'ble Mr. Justice S.K. KRISHNAN

..

Writ Appeal No.492 of 2001

And CMP.No.3965 of 2001

..

N. Palanisamy .. Appellant/Petitioner.

vs.

1. The Government of Tamil Nadu
   rep. by its Secretary
   Adi Dravidar and Tribal
   Welfare Department,
   Fort St. George, Chennai 9.

2. The District Collector
   Salem District
   Salem.

3. The Special Tahsildar (ADW)
   Omalur, Salem District. .. Respondents/Respondents.

Appeal under clause 15 of the Letters Patent against the order of this Court dated 12.04.2000 made in WP.No.5091 of 1997.

For appellant : Mr. P. Mani

For respondents: Mr. D. Krishnakumar
Spl. Govt., Pleader

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JUDGEMENT

(Judgment of the Court was delivered by P. SATHASIVAM,J.,)

The above writ appeal has been filed against the order of the learned single Judge dated 12.04.2000 made in W.P.No.5091 of 1997, in and by which the learned Judge confirmed the acquisition proceedings initiated under Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act, 1978 (in short "Tamil Nadu Act").

2. Heard the learned counsel for the appellant as well as the learned Special Government Pleader for respondents.

3. It is seen that Adi Dravidars of Pudu Reddiyur, hamlet of P.N. Patti Village, Mettur Taluk, Salem District have requested the District Collector to provide house sites. Pursuant to the said request, necessary proposal under Section 4 (1) of the Tamil Nadu Act has been submitted to the Government by the District Collector to acquire 2 acres of patta land in S.No.877/3 of P.N. Patty Village under Land Acquisition Act, 1894 (Central Act). Subsequently, the District Collector has authorised the Special Tahsildar to acquire the same under Tamil Nadu Act. After issuance of notice and after considering the objections of the land owner, the Special Tahsildar submitted a report to the District Collector, Salem. On considering the report of the Special Tahsildar, after satisfying himself, the need for acquisition of land, viz., for providing house sites to houseless Adi Draviders, the District Collector issued notification in the District Gazette, which was challenged by way of Writ Petition No.5091 of 1997 before this Court. The order of the learned Judge dated 12.04.2000 shows that only one contention was raised before him, viz., that the land being a mango grove, the same cannot be acquired and for that due to availability of alternative poramboke lands, the authorities are not justified in acquiring the land of the petitioner. The learned Judge considering the stand taken by the respondents in their counter affidavit, after holding that there is no prohibition in the Act for acquiring the land with mango trees and taking note of the fact that the authority concerned, viz., District Collector, after satisfying himself regarding the need for acquisition of this land and proceeded, after rejecting the only contention, dismissed the said writ petition. Questioning the same, the petitioner has filed this appeal.

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4. Mr. P. Mani, learned counsel appearing for the appellant after taking us through the order of the learned Judge and the acquisition proceedings has raised the following contentions:

> "(i) Inasmuch as the appellant being a small former, the respondents are not entitled to acquire his land;

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(ii) As there is a residential house in the land in question, where the appellant resides, the said aspect has not been considered by the Tahsildar and the Collector concerned;

(iii) Since several mango trees are there, the respondents are not permitted to acquire the land with the same.

(iv) Inasmuch as several suitable poramboke lands are available in the same Village, the respondents are not justified in acquiring the land of the appellant.

(v) The Collector has not considered the objections raised. "

5. On the other hand, learned Special Government Pleader, after taking us through various averments in the counter affidavit filed before the learned Judge as well as the reasoning of the learned Judge would submit that, after following the procedure as prescribed under the State Act, the respondents 2 and 3 have proceeded with the acquisition under State Act and of the fact that the objections raised by the petitioner (appellant) were considered and rejected by the Collector, there is no valid ground for interference. He also contended that the learned Judge is perfectly right in dismissing the writ petition.

6. Coming to the first contention relating to the claim that the appellant being a small farmer, admittedly, there is no prohibition in the State Act that the land of the small farmer should not be acquired. First of all, the said objection has not been raised before the learned single Judge. Even if there is any prohibition by way of executive instruction in the form of Government Orders, in the absence of specific bar either in the Act or in the Rules made thereunder, the said instruction are not a bar in proceeding with the acquisition. Accordingly, we are unable to accept the said contention.

7. Coming to the second contention, viz., existence of residential house in the land in question, it is not in dispute that, if any house or building lies in the land in question, undoubtedly, compensation will be paid for the same. Accordingly, we reject the second contention also.

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8. Regarding the objection of acquisition on the ground of existence of mango trees, this objection was raised before the learned single Judge. As rightly observed by the learned Judge, there is no provision in the Act that the land with mango trees should not be acquired. Even if the trees are available and the same are established, as said earlier, the land owner would be entitled compensation for the same. Accordingly, we find no force in the said contention.

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9. Coming to the claim that several poramboke lands are available in the same Village, it is true that in the report of the Special Tahsildar (ADW), Omalur dated 10.03.1996, the Officer has referred to the availability of poramboke lands in the Village. However, in the same report, the Officer has notified that the said poramboke lands were encroached by Vanniyar community people and if they are evicted, there would be law and order problem in the village. He also observed that to avoid law and order problem, the poramboke lands cannot be spared for occupation of other community. Even in the counter affidavit filed before the learned Judge, this aspect has been considered and reiterated that though poramboke lands in S.Nos.203, 204, 518, 880/1, 881, etc., are available, but it is stated that they are not suitable for acquisition, since these lands were already under enjoyment and possession of poor land less people belonging to different communities. It is also stated that if they are evicted, it will lead to a communal clash between the people in the village. In such a circumstance, it cannot be insisted that the proamboke lands alone to be utilised or provided for construction of houses to Adi Dravidar people. There is no reason to reject the report of the Tahsildar and the acceptance made by the District Collector, who are conversant with the local problems, particularly, law and order problem between two communities. Accordingly, the contention based on existence of poramboke lands is also liable to be rejected.

10. Coming to the last contention, viz., that the Collector has not passed a reasoned order and not considered all the objections of the land owner, no doubt, the respondents have not produced records, particularly the order of the Collector, accepting the report of the Tahsildar. However, it is not in dispute that even before the learned single Judge, on behalf of the respondents, the third respondent has filed a counter affidavit meeting all the contentions raised therein. We also perused the necessary information stated therein and also the notification issued in the District gazette by the District Collector which was made after acceptance of the report of the Tahsildar. Though the learned counsel for the appellant has cited several decisions (all learned single Judge's order of this Court), we are of the view that there is no dispute with regard to the proposition laid down in those decisions. The relevant point is, whether there is any violation of the statutory provisions and whether the respondents failed to avail the procedure as contemplated under the Act. It is to be noted that the provisions of Tamil Nadu Act have been upheld by the Supreme Court and the scope and interference under this Act is very limited. Considering the object and intend of the legislation and if the authority concerned, viz., the District Collector satisfies himself that the particular land is required for provision of house sites to houseless Adi Dravidars, we are of the view that this Court cannot go into the decision or conclusion arrived at by the said authority unless there is ample material to show that the said action was taken on a mala fide intention. There is no such allegation either before the learned Judge or before this court. In such a circumstance, we are of the view that it is unnecessary to refer all the decisions relied on by the learned counsel for the appellant.

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In the light of what is stated above, we are in agreement with the conclusion arrived at by the learned Judge and do not find any valid ground for interference. Accordingly, the writ appeal fails and the same

Sd/-

Asst. Registrar.

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Sub Asst. Registrar.

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To
1. The Secretary
   Government of Tamil Nadu
   Adi Dravidar and Tribal
   Welfare Department,
   Fort St. George, Chennai 9.

2. The District Collector
   Salem District
   Salem.

3. The Special Tahsildar (ADW)
   Omalur, Salem District.

+ 1 CC to Mr.P. Mani, Advocate SR NO 19334

+ 1 CC to Govt. Pleader, High Court, Madras SR NO 19073

W.A.No.492 of 2001
Dated:20.04.2005

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